ORDINANCE 2018-062  

PASSED: OCTOBER 8, 2018

AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH FEHRR-GRAHAM & ASSOCIATES, INC. FOR THE PURPOSE OF ENVIRONMENTAL CONSULTING AT 1101 N. FIRST STREET IN AN AMOUNT NOT TO EXCEED $56,100, AND AUTHORIZING AN AMENDMENT TO THE FISCAL YEAR-END DECEMBER 31, 2018 BUDGET FOR SAID EXPENSES.

WHEREAS, the City of DeKalb is a home-rule municipal corporation with all power and authority derived under the law; and

WHEREAS, the City Council wishes to award a contract for professional services relating to the environmental remediation of the City-owned property at 1101 N. First Street; and

WHEREAS, a budget amendment is required to accommodate the financial obligations associated with this agreement.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois:

Section 1. That the Mayor of the City of DeKalb, Illinois, is authorized and directed to sign an agreement with Fehr-Graham & Associates, Inc., a copy of which is attached hereto, in an amount not to exceed $56,100, subject to such changes as shall be acceptable to him.

Section 2. That the City Clerk of the City of DeKalb is authorized and directed to attest the Mayor’s signature.

Section 3. Thereafter, City staff are directed to fully comply with the terms of the agreement, and to undertake the obligations contained therein. The City Council expressly approves of the provision of the funding contemplated therein without requirement of further Council approval. The City also further authorizes City staff to undertake the bidding of any work, construction or remediation required in order to restore the subject property, provided that the award of any bid in excess of $20,000 or for any work which is not then-presently budgeted shall require City Council approval.

Section 4. That, the City of DeKalb, which utilizes the Budget Process as contemplated by Article 8, Division 2 of the Illinois Municipal Code including but not limited to 65 ILCS 5/8-2-9.1 through 65 ILCS 5/8-2-9.10, adopts an amendment to its FY2018 Budget, as shown below:

<table>
<thead>
<tr>
<th>General Fund</th>
<th>Account Number</th>
<th>Increase/ (Decrease)</th>
<th>Revised Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractual Services</td>
<td>01-32-10-300-8399</td>
<td>$56,100.00</td>
<td>$162,243.00</td>
</tr>
</tbody>
</table>
Section 5. That each section, paragraph, sentence, clause and provision of the Ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 6. Upon its passage and approval according to law, this Ordinance shall by authority of the City Council be published in pamphlet form.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting thereof held on the 8th day of October, 2018, and approved by me as Mayor on the same day. Passed on First Reading by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None. Second Reading waived by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:

LYNN A. FAZEKAS, City Clerk

JERRY SMITH, Mayor

STATE OF ILLINOIS

CITY OF DE KALB

[Signature]
July 24, 2018

Mr. Dean Frieders  
City of DeKalb  
200 South Fourth Street  
DeKalb, Illinois 60115

Re: Proposal for Professional Environmental Services
   Former Marathon/Speedway  
   1101 N. First Street  
   DeKalb, IL

Dear Mr. Frieders:

As we discussed, we believe there are three (3) options the City could utilize to address the environmental issues at the former Marathon/Speedway site referenced above. First, we could utilize the Illinois Environmental Protection Agency (IEPA) Leaking Underground Storage Tank (LUST) fund. Second, we could work with the IEPA’s Office of Site Evaluation (OSE) to provide assessment assistance and lastly, we could apply for Brownfield Assessment Grant funding in the fall of 2018. A few more details of each option follow.

Leaking Underground Storage Tank (LUST) Program Overview

LUST Incident typically begins with the removal of underground storage tank (UST) and the Office of State Fire Marshall observes contamination requiring an “incident” to be called into the Illinois Emergency Management Agency (IEMA). From the IEMA Incident, the release is then regulated going forward with the Illinois Environmental Protection Agency (IEPA) in the sequence provided below.

20 Day Certification
This is certification by the owner and operators of the LUST site that certain early action responses will be conducted. The 20-day certification is required to be submitted within 20 days of the IEMA Incident Release date. This step was completed by others approximately 11 years ago.

45 Day Report
The report provides a summary of the basic site information, surrounding area, and the early action activities. In this case, that will include the preliminary site assessment activities. If site assessment activities indicate that a release has occurred, certain early action response activities; such as free product removal, UST system repairs/removal, and removal/disposal of a limited amount of contaminated soil (if discovered). Under 734, the regulations require that one (1) soil sample be collected from every five (5) soil cores above the water table. This step was completed by others approximately 11 years ago.
Early Action Activities
These are activities associated with addressing short term response to the release, like recovery of free product, or removal of a limited amount of highly impacted soil immediately around the UST system. This work must occur within 45 days of the date of the release, unless an early action period time extension is requested and approved by IEPA. This does not appear to have been applied to this site historically.

Site Investigation
This task includes the investigative activities, which may include soil borings, installation of groundwater monitoring wells, soil gas sampling, surveying, sampling, and laboratory analysis.

Site Investigation Completion Report
The findings of the investigative activities are presented in the Site Investigation Completion Report in accordance with IEPA reporting requirements. This was completed historically in 2006. An amendment may be needed, but likely can be incorporated into another step.

Corrective Action Plan & Budget
If the results of the investigative activities indicate that corrective action will be needed, then the Corrective Action Plan (CAP) will be prepared. The plan will present how the soil and/or groundwater contamination will be addressed. The corrective action may consist of soil and/or groundwater treatment or some form of an institutional control such as restriction on the installation and use of a drinking water well. Any site investigation supplemental information may be included in this step.

Corrective Action
This task consists of completing the work presented in the CAP.

Corrective Action Completion Report
This report is the final report in the process and reports the corrective action work completed whether active or some sort of institutional control. Upon acceptance, the IEPA can issue a No Further Remediation Letter (NFR).

IEPA Office Of Site Evaluation
IEPA Office of Site Evaluation (OSE) can provide drilling, testing, and basic reporting services to municipalities that request Brownfield assistance. The process requires a resolution to be passed formally requesting assistance. Typically, Fehr Graham works with the OSE to conduct work. The OSE provides the drilling and analytical testing and we provide the reporting. This does not provide cleanup assistance, so there are limits.

USEPA Brownfield Assessment Grants
Brownfield Assessment Grant application to the United States Environmental Protection Agency (USEPA) occur annually, typically in the fall. The application typically requests up to $300,000 in assessment grant funding over a three-year period.
Brownfield Assessment Grant Funds may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). There is no cost share required by the Brownfield program for any funds acquired from the assessment grant. The grant cycle typically opens in the fall and awards are made in the spring effective on the federal fiscal year. In this case, that will be October of 2019.

Beyond the actual assessment work, grant funds may be used for direct costs associated with programmatic management of the grant, as well as site prioritization, community outreach, and funds management.

**Recommended Option and Scope of Work**

We have reviewed the available information and spoke with the IEPA project manager. We believe the best path is the LUST program because some work has already been done, and any future work completed would be eligible for reimbursement through the IEPA LUST Program fund.

The following steps are what we anticipate. We are also providing cost estimates for each step.

- Amended Corrective Action Plan - $15,500
- UST Closure Plan Set - $10,100
- UST Closure with limited soil removal - $47,000 (would have to be bid out to a contractor)
- UST Closure Sampling - $5,900
- Groundwater Sampling (existing 4 wells) - $2,800
- Bulk density, FOC, specific gravity, and moisture - $2,200
- Corrective Action Completion Report (CACR) - $12,000
- Monitoring Well Abandonment - $2,500

All work is eligible for reimbursement and we would stay within the LUST program payment allowances.

**Exclusions**

- Additional unknown USTs
- Building or canopy removal
- Groundwater treatment

**Schedule**

We can begin immediately with the amended Corrective Action Plan (CAP) and would have it ready for submittal to IEPA in 30 days. IEPA then has 120 days to review the submittal. Based on the steps we have identified; the time is estimated as follows:

- Amended Corrective Action Plan - 30 days
- IEPA CAP Review - 120 day
- UST Closure Plan Set - 30 days
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Mr. Dan Frieders, City of DeKalb
Environmental Professional Services
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- UST Bidding and Award - 45 days
- UST Closure with limited soil removal (would have to be bid out to a contractor) - 30 days
- UST Closure Sampling - 30 days
- Groundwater Sampling (existing 4 wells) - 30 days
- Bulk density, FOC, specific gravity, and moisture - 2 weeks
- Groundwater sampling and CACR - 60 days
- IEPA Review of CACR - 120 days
- Monitoring Well Abandonment - 30 days

Please note that review times can be less than 120 days with the IEPA, but they are allowed up to 120 days.

**Professional Fees**

Fehr Graham is prepared to complete the above-described scope of work on a time and material basis within the payment amounts allowed by the IEPA. We would expect payment from the City and then we would prepare and submit the LUST reimbursement packages. At this point, we estimate the total cost for the portion to be conducted by Fehr Graham is $51,000. Costs could change based on IEPA comments or requirements that we cannot foresee, but any additional costs would be run through the LUST program.

**Authorization**

We trust that the information we have provided is in line with your expectations. If you would like us to proceed with this project, please sign the enclosed Agreement for Professional Services and return to us, which will serve as authorization for Fehr Graham to proceed.

Fehr Graham is willing to commit the necessary resources to this project to provide timely and competent solutions to assure that this project moves forward. We look forward to working with you on this project.

Sincerely,

Joel P. Zirkle, P.G.
Branch Manager/Principal

JPZ:cld

Enclosure

N:\Proposals\2018\Joel Zirkle\City of DeKalb\1101 N First Street Environmental Services Proposal.doc
AGREEMENT
FOR PROFESSIONAL SERVICES

Client        Mr. Dean Frieders
City of DeKalb
200 South Fourth Street
DeKalb, IL 60115
815.748.2000

Description of Services:

City of DeKalb - Environmental Services 1101 North First Street; DeKalb, IL

Fehr Graham to provide professional environmental services as related to the property located at 1101 North First Street in DeKalb, Illinois, as detailed in proposal letter dated July 24, 2018.

COST: You will be billed on a time and material basis as per the annually established fee schedule.

The fee for performing the above services is estimated to be $51,000.

The attached General Conditions are incorporated into and made a part of this Agreement.

ACCEPTED AND AGREED TO:
I/we, the undersigned, authorize Fehr Graham to provide services as outlined above, and also agree that I/we are familiar with and ACCEPT THE TERMS OF THE ATTACHED GENERAL CONDITIONS.

CLIENT: ___________________________ SIGNATURE: ___________________________
Name: Jerry Smith
Title: Mayor
Date Accepted: 10-8-2018

CONSULTANT: ___________________________ SIGNATURE: ___________________________
Name: Joel P. Zirkle
Title: Principal
Date Proposed: July 24, 2018
GENERAL CONDITIONS TO AGREEMENT FOR PROFESSIONAL SERVICES

1. The Client requests the professional services of Fehr Graham hereinafter called “The Consultant” as described herein.

2. The Consultant agrees to furnish and perform the professional service described in this Agreement in accordance with accepted professional standards. Consultant agrees to provide said services in a timely manner, provided, however, that Consultant shall not be responsible for delays in completing said services that cannot reasonably be foreseen on date hereof or for delays which are caused by factors beyond his control or delays resulting from the actions or inaction of any governmental agency. Consultant makes no warranty, expressed or implied, as to his findings, recommendations, plans and specifications or professional advice except that they were made or prepared in accordance with the generally accepted engineering practices.

3. It is agreed that the professional services described in the Agreement shall be performed for Client’s account and that Client will be billed monthly for said services. A 1% per month service charge will be incurred by Client for any payment due herein and not paid within 30 days of such billing which is equal to an ANNUAL PERCENTAGE RATE OF 18%. Partial payments will be first credited to the accrued service charges and then to the principal.

4. The Client and the Consultant each binds himself, his partners, successors, executors, and assigns to the other party to this agreement and to the partners, successor, executors, and assigns of such other party in respect to this agreement.

5. The Client shall be responsible for payment of all costs and expenses incurred by the Consultant for his account, including any such monies that the Consultant may advance for Client’s account for purposes consistent with this Agreement.

6. The Consultant reserves the right to withdraw this Agreement if not accepted within 30 days.

7. A claim for lien will be filed within 75 days of the date of an invoice for services (last day of services rendered) unless the account is paid in full or other prior arrangements have been made. All attorney fees incurred by the Consultant due to the filing of said lien or the foreclosure thereof shall be borne by the Client.

In the event suit must be filed by Consultant for the collection of fees for services rendered, Client will pay all reasonable attorney’s fees and court costs.

If Client defaults in payment of fees or costs due under the terms of this Agreement and Consultant incurs legal expenses as a result of such failure, Client shall be responsible for payment for Consultant’s reasonable attorney fees and costs so incurred.

8. The Consultant shall present, for the consideration of the Client, engineering and technical alternatives, based upon its knowledge and experience in accordance with accepted professional standards, with selection of alternatives and final decisions as requested by the client to be the sole responsibility of the Client.

9. Construction Phase Activities (When applicable) - In connection with observations of the work of the Contractor(s) while it is in progress the Consultant shall make visits to the site at intervals appropriate to the various stages of construction as the Consultant deems necessary in Agreement to observe as an experienced and qualified design professional the progress and quality of the various aspects of the Contractor(s)’ work. Based on information obtained during such visits and on such observation, the Consultant shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and the Consultant shall keep the Client informed of the progress of the work.

The purpose of the Consultant’s visits to the site will be to enable the Consultant to better carry out the duties and responsibilities assigned to and undertaken by the Consultant during the Construction Phase, and, in addition, by exercise of the Consultant’s efforts as an experienced and qualified design professional, to provide for the Client a greater degree of confidence that the completed work of the Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor(s). The Consultant shall not, during such visits or as a result of such observations of Contractor(s)’ work in progress, supervise, direct or have control over Contractor(s)’ work nor shall the Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractors(s) furnishing and performing their work. Accordingly, the Consultant can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)’ failure to furnish and perform their work in accordance with the Contract Documents.

10. Estimates of Fees - When fees are on a time and material basis the estimated costs required to complete the services to be performed are made on the basis of the Consultant’s experience, qualifications, and professional judgment, but are not guaranteed. If the costs appear likely to exceed the estimate in excess of 20%, the Consultant will notify the Client before proceeding. If the Client does not object to the additional costs within seven (7) days of notification, the increased costs shall be deemed approved by the Client.

11. The Consultant is responsible for the safety on site of his own employees. This provision shall not be construed to relieve the Client or the Contractor(s) from their responsibility for maintaining a safe work site. Neither the professional services of the Consultant, nor the presence of his employees or subcontractors shall be construed to imply that the Consultant has any responsibility for any activities on site performed by personnel other than the Consultant’s employees or subcontractors.

12. Original survey data, field notes, maps, computations, studies, reports, drawings, specifications and other documents generated by the Consultant are instruments of service and shall remain the property of the Consultant. The Consultant shall provide copies to the Client of all documents specified in the Description of Services.

Version 1.0 September 2015
Any documents generated by the Consultant are for the exclusive use of the Client and any use by third parties or use beyond the intended purpose of the document shall be at the sole risk of the Client. To the fullest extent permitted by law, the Client shall indemnify, defend and hold harmless the Consultant for any loss or damage arising out of the unauthorized use of such documents.

13. No claim may be asserted by either party against the other party unless an action on the claim is commenced within two (2) years after the date of the Consultant's final invoice to the Client.

14. If a Client's Purchase Order form or acknowledgment or similar form is issued to identify the agreement, authorize work, open accounts for invoicing, provide notices, or document change orders, the preprinted terms and condition of said Purchase Order shall be superseded by the terms hereof.

15. Standard of Care - Services performed by Consultant under this agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other representation expressed or implied, and no warranty or guarantee is included or intended in any report, opinion or document under this agreement.

16. Liability Insurance - Consultant will maintain such liability insurance as is appropriate for the professional services rendered as described in this Agreement. Consultant shall provide Certificates of Insurance to Client, upon Client's request, in writing.

17. Indemnification and Limitation of Liability - Client and Consultant each agree to indemnify and hold the other harmless, including their respective officers, employees, agents, members, and representatives, from and against liability for all claims, costs, losses, damages and expense, including reasonable attorney's fees, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's acts, errors or omissions.

The Client understands that for the compensation herein provided Consultant cannot expose itself to liabilities disproportionate to the nature and scope hereunder. Therefore, the Client agrees to limit Consultant's liability to the Client arising from Consultant's professional acts, errors or omissions, such that the total aggregate liability of Consultant shall not exceed $50,000 or Consultant's total fee for services rendered on this Project, whichever is less.

18. Allocation of Risk - Consultant and Client acknowledge that, prior to the start of this Agreement, Consultant has not generated, handled, stored, treated, transported, disposed of, or in any way whatsoever taken responsibility for any toxic substance or other material found, identified, or as yet unknown at the Project premises. Consultant and Client further acknowledge and understand that the evaluation, management, and other actions involving toxic or hazardous substances that may be undertaken as part of the Services to be performed by Consultant, including subsurface excavation or sampling, entails uncertainty and risk of injury or damage. Consultant and Client further acknowledge and understand that Consultant has not been retained to serve as an insurer of the safety of the Project to the Client, third parties, or the public.

Client acknowledges that the discovery of certain conditions and/or taking of preventative measures relative to these conditions may result in a reduction of the property's value. Accordingly, Client waives any claim against Consultant and agrees to indemnify, defend, and hold harmless Consultant and its subcontractors, consultants, agents, officers, directors, and employees from any claim or liability for injury or loss allegedly arising from procedures associated with environmental site assessment (ESA) activities or the discovery of actual or suspected hazardous materials or conditions. Client releases Consultant from any claim for damages resulting from or arising out of any pre-existing environmental conditions at the site where the work is being performed which was not directly or indirectly caused by and did not result from, in whole or in part, any act or omission of Consultant or subcontractor, their representatives, agents, employees, and Invitees.

If, while performing the Services set forth in any Scope of Services, pollutants are discovered that pose unanticipated or extraordinary risks, it is hereby agreed that the Scope of Services, schedule, and costs will be reconsidered and that this Agreement shall immediately become subject to renegotiation or termination. Client further agrees that such discovery of unanticipated hazardous risks may require Consultant to take immediate measures to protect health and safety or report such discovery as may be required by law or regulation. Consultant shall promptly notify Client upon discovery of such risks. Client, however, hereby authorizes Consultant to take all measures Consultant believes necessary to protect Consultant and Client personnel and the public. Furthermore, Consultant agrees to compensate Consultant for any additional costs associated with such measures.

19. In the event of legal action to construe or enforce the provisions of this agreement, the prevailing party shall be entitled to collect reasonable attorney fees, court costs and related expenses from the losing party and the court having jurisdiction of the dispute shall be authorized to determine the amount of such fees, costs and expenses and enter judgment thereof.

20. Termination - The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. In the event of any termination, Consultant will be paid for all services rendered to the date of receipt of written notice of termination, at Consultant's established chargeout rates, plus for all Reimbursable Expenses including a 15% markup.

21. Provision Severeable - The unenforceability or invalidity of any provisions hereof shall not render any other provisions herein contained unenforceable or invalid.

22. Governing Law and Choice of Venue - Client and Consultant agree that this Agreement will be governed by, construed, and enforced in accordance with the laws of the State of Illinois. If there is a lawsuit, Client and Consultant agree that the dispute shall be submitted to the jurisdiction of the Illinois District Court in and for Stephenson County, Illinois.